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June 3, 2014

Via ECF

Honorable Kenneth M. Karas
United States District Judge
Southern District of New York
United States Courthouse
300 Quarropas Street, Chambers 533
White Plains, NY 10601

RE: *Deskovic v. City of Peekskill, et al.*, 07-CV-8150(KMK)

Dear Judge Karas:

In further support of Plaintiff's pending omnibus motion *in Limine*, D.E. 691, Plaintiff writes to notify the Court of today's decision by the Second Circuit in *Stanczyk v. City of New York*, No. 13-1582-cv (2d Cir. June 3, 2014). (Attached as Exhibit A).

Plaintiff's motion seeks permission from the Court to reference specific, lump-sum damages amounts and specific, unit-of-time damages amounts as part of counsel's arguments to the jury. *See* D.E. 691 at 23–27 (Plaintiff's Proposed Arguments Regarding Damages). *Stanczyk* further supports Plaintiff's motion. The plaintiff in *Stanczyk*, who had prevailed on her § 1983 excessive force claim and been awarded \$59,000 in damages by the jury, appealed the jury's damages verdict, arguing that she was entitled to a new trial on damages. *See* Ex. A at 3, 12.

In rejecting the plaintiff's argument on appeal, the Second Circuit explicitly faulted plaintiff's counsel for not suggesting specific damages amounts to the jury. The Court wrote:

Moreover, although *Stanczyk*'s counsel elicited substantial testimony and submitted numerous exhibits concerning *Stanczyk*'s physical and emotional pain and suffering, he failed to submit a single medical bill or elicit any testimony from *Stanczyk*'s experts and treating physicians regarding the cost of her medical treatment. **Further compounding this error, *Stanczyk*'s counsel never provided the jury with a reference point from which to gauge *Stanczyk*'s damages. For instance, he elected not to suggest, nor even move for the opportunity to suggest, a specific damages figure to the jury.** *See Lightfoot v. Union Carbide Corp.*, 110 F.3d 898, 912-13 (2d Cir. 1997). Rather, as a review of his summation makes clear, *Stanczyk*'s counsel relegated to the jury full discretion to award what it deemed proper.

As this Court has stated, albeit in a somewhat different context, “[a] plaintiff is not permitted to throw [herself] on the generosity of the jury. If [s]he wants damages, [s]he must prove them.” *Bracey v. Bd. of Educ. of City of Bridgeport*, 368 F.3d 108, 119 (2d Cir. 2004) (internal quotation marks omitted). Stanczyk’s counsel effectively abdicated this duty; in light of the unique facts of this case, his failure to provide evidence as to cost or **to provide the jury with a monetary reference point** precludes a finding that the challenged conduct, even if improper, erroneous, or an abuse of discretion, caused prejudice to the jury’s award of compensatory damages.

Ex. A at 14–15 (emphasis added).

Plaintiff respectfully requests that the Court consider this supplemental authority.

Respectfully submitted,

A handwritten signature in cursive script, reading "Farhang Heydari".

Farhang Heydari
Attorney for Plaintiff

cc: All counsel (via ECF)